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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 527

CARPENTERS AND JOINERS OF AMERICA LOCAL NO. 213, ET AL., *Petitioners,*

v.

RITTER'S CAFE, ET AL., *Respondents*

RESPONDENTS' REPLY BRIEF TO PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF

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To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Concise Statement of the Matter

The opinion of the Court below is reported in 149 Southwestern Reporter (Second Series) 694. (Writ of Error refused by the Supreme Court, State of Texas.) The findings of fact and conclusions of law of the Trial Court are embodied in said opinion.

The controversy between the parties centered upon the alleged right of Petitioners to picket Respondents' place of business (a small cafe), for the sole purpose of compelling

Respondent Ritter to break a lawful contract which he had with W. A. Plaster, a disassociated third party, by the terms of which Plaster was to erect a small building on Respondent Ritter's homestead. (cf. Statement of Facts below, page 86.) Respondent Ritter had in his employ members of an affiliate union of the American Federation of Labor, which employees were compelled, by the initiation of such picketing by Carpenters and Painters to relinquish their employment relation with Respondent Ritter, although a complete state of harmony existed between the Restaurant Employees Union (A. F. of L) and Respondent Ritter. The evidence was without dispute, and the findings of fact and conclusions of law unchallenged, and they are correctly and completely set forth in the opinion of the Court below. We refer to that opinion for a statement of the entire case.

Summary of Argument

The Court below applied the general rules and principles governing the activities of a labor organization when they were in violation of Respondents' right to engage in the free pursuit of the lawful business and when such activities were in violation of the Anti-Trust Statutes of the State of Texas.

The opinion of the Court below shows that the controversy existing is one involving the right of a citizen of the State of Texas to conduct a lawful business in a lawful manner, and his right to enter freely into a lawful and subsisting contract with a third person who is wholly disconnected from Petitioners' organizations. It involves the inherent right of the State of Texas to restrict, by reasonable laws and regulations, activity of Petitioners' organizations in their unlawful attempt to restrict the constitutional right of Respondents to enter into a lawful contract with a third party, and to interfere with the free pursuit of Respondents' business. It accordingly follows that the subject matter of the controversy

is really one in which the Petitioners here seek to have another hearing rather than to correct any misapplication of settled rules of law or any conflict of decisions. Briefly stated, the Court below held that the picketing activities of Petitioners' organizations was part of a scheme to compel Respondent by coercion to break a contract which Respondents had previously executed, in the performance of a lawful purpose, with a disassociated third party, and that such conduct constituted a violation of the Anti-Trust Statutes of the State of Texas, and the alleged constitutional right of free speech was being employed to further a boycott. The Court examined the facts as disclosed by the undisputed evidence, the unchallenged findings, and found that the acts on the part of Petitioners constituted an illegal trust and conspiracy in restraint of trade and a secondary boycott; that such conduct was prohibited by the Statutes (Civil and Criminal) of the State of Texas, and were in violation of the Federal and State Constitutions protecting Respondents in the ownership, use and employment of their property and the right to engage in a lawful business in a lawful manner without outside interference, and the right to freely contract with any person, in a lawful undertaking, without illegal restrictions. That the right of free speech to Petitioners was no greater nor entitled to greater protection than the rights of these Respondents to own, use and enjoy their property, and to enter into lawful contracts without outside interference and dictation; that the Courts of the State of Texas were given plenary authority to prohibit such unlawful acts even though they be executed under the guise of the exercise of the right of free speech. The Court below accordingly held that the Petitioners' claims were without foundation in fact and in law.

Obviously, the allegation in the petition for a Writ of Certiorari here that there is a conflict between the decision of

the Court below and that of this Court in the cases of AMERICAN FEDERATION OF LABOR v. SWING, 85 L. Ed. 513; MILK WAGON DRIVERS UNION v. MEADOWMOORE DAIRIES, INC., 85 L. Ed. 497; SENN v. TILE LAYERS PROTECTIVE UNION, 57 Sup. Ct. Rep. 857; and THORNHILL v. ALABAMA, 84 L. Ed. 1093, is without foundation. In the last case cited, this Court held and recognized the State's power to regulate the right to picket and, in no uncertain terms, affirmed the right of a State to enact reasonable laws in the interest of society. This Court stated:

> "It is true that the right of employers and employees to conduct their economic affairs and to compete with others for a share in the products of industry are subject to modification or qualification in the interest of society in which they exist."

The SENN case decided merely that an organization might make known the facts of a labor dispute (which are absent in the case before this Court), and that the Wisconsin Labor Code violated no constitutional right, and said decision does not identify picketing with the right of free speech. It likewise repudiated picketing for an unlawful purpose by stating:

> "peaceful picketing" "implies not only absence of violence, but absence of any unlawful act."

In the MEADOWMOORE DAIRIES case, this Court held that the right of free speech is not unlimited but that, under certain circumstances and facts, State Courts have the authority to enjoin picketing by a labor organization in order to protect the right of its people where the picketing is "enmeshed" with such conduct as the State Statute declares unlawful or where it breaches such laws as are considered necessary for the protection of its citizens. In the SWING case, this Court decided merely that a labor organization could not be enjoined

from picketing an employe 's place of business, with whom the union sought to contract for its members. Here the Court below makes no pretentions even to intimate that picketing where lawful, is not now generally conceded. It simply holds under well recognized rules of law, that the State has the power to regulate the means of exerting economic pressure and the State's right to curb unlawful conduct in the interest of society, and the welfare of its people. No attempt is made to restrict lawful picketing, where such activity is conducted for a lawful purpose.

The decision of the Court below was clearly correct and should not be disturbed. It is of course a general rule of law that a State possesses the inherent power to regulate picketing activities in the interest of its people, and for their protection. While this rule has been stated in different ways, the rule itself is clearly settled law with respect to the power of the State to enact reasonable legislation affecting labor organizations. As it is put in the case of CARLSON V. STATE OF CALIFORNIA, 310 U.S. 106, 60 S. Ct. 746, 749, 84 L. Ed. 1104 (opinion by MR. JUSTICE FRANKFURTER):

> "The power and duty of the State to take adequate steps to preserve the peace and protect the privacy, the lives, and the property of its residents cannot be doubted."

See also THORNHILL V. ALABAMA, 310 U.S. 88, 60 S. Ct. 736, 84 L. Ed. 1093. It is likewise well settled, that picketing may not be condemned, under a state of fact, where a dispute exists with an employer, notwithstanding the absence of employer-employee relationship, provided there is absence of criminal or unlawful acts condemned by the Statutes of a given State. This Court, speaking, through MR. JUSTICE FRANKFURTER, in AMERICAN FEDERATION OF LABOR V. SWING, 312 U.S. 321, 61 S. Ct. 568, 85 L. Ed. 513, stated:

"* * * * We merely hold that in the circumstances of the record before us the injunction authorized by the Supreme Court of Illinois, does not transgress its constitutional power. But just as a state through its legislature may deal with specific circumstances menacing the peace by an appropriately drawn act, Thornhill v. Alabama, supra, so the law of a state may be fitted to a concrete situation through the authority given by the state to its Courts. This is precisely the kind of a situation which the Thornhill opinion excluded from its scope * * * *"

Thus, the cases of THORNHILL V. ALABAMA and CARLSON V. CALIFORNIA merely decide that the Statute and ordinance were imperfectly drawn and constituted a menace to free speech.

An examination of the opinion of the Court below indicates that it was merely complying with the Civil and Criminal Statutes of Texas (R.S., Articles 5152, 5153 and 5154, and Article 1643 of the PENAL CODE, R. S., Articles 7426 and 7428, and Articles 1632, 1634 and 1635 of the PENAL CODE), which prohibit an attempt to restrict a citizen in the free pursuit of his lawful business, or threats to boycott such a person. This Court, in the case of TIGNER V. STATE OF TEXAS, 310 U.S. 1431, 60 S. Ct. 879, 84 L. Ed. 1124, 130 A.L.R., 1321, opinion by MR. JUSTICE FRANKFURTER, held that the Texas Anti-Trust Statute, Article 1632, etc., was constitutional.

Here Petitioners sought to compel Respondents, with whom no quarrel existed, to break a lawful contract previously entered into with a third party, by threats and positive injuries to Respondents; the Court below holding that such conduct was oppressive, involved duress and constituted a combination and secondary boycott, in violation of the Texas Anti-Trust Statute, as well as the established decisions of this Court and of the State of Texas. ALLGEYER V. LOUISIANA, 165 U.S. 578, 17 S. Ct. 427, 41 L. Ed. 835; DUPLEX PRINTING PRESS

COMPANY v. DEERING, 254 U.S. 443, 41 S. Ct. 172, 65 L. Ed. 349, 16 A.L.R. 196; HOPKINS v. OXLEY STAVE CO., 28 C.C. A. 99, 49 U.S. App. 709, 83 Fed. 912; LOEWE v. LAWLOR, 208 U.S. 274; DORCHY v. KANSAS, 272 U.S. 306, 47 S. Ct. 86, 71 L. Ed. 248; PARKER PAINT AND WALL PAPER CO. v. LOCAL NO. 813, 105 S.E. 911 (W. Va.); the FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION; Section 19, Article I, CONSTITUTION OF THE STATE OF TEXAS; EX PARTE GEORGE TUCKER, 110 Texas 335, 220 S.W. 75; FEHR BAKING CO. v. BAKERS UNION, 20 Fed. Supp. 691.

There is no evidence to support any of the criticisms of the Court below made on pp. 14-17 of the Petitioners' brief.

Since the Court below has correctly summarized the undisputed evidence and unchallenged findings and has correctly applied the general principles of law governing the activities of labor organizations, in such cases, it is submitted Respondents will not burden this Court with further argument on this point.

Finally, the Court below makes no attempt to curb picketing where it is done in the pursuit of a lawful purpose, and in a lawful manner.

Of course, this question is entirely different from that raised in the cases cited in Petitioners' brief. The gulf between the facts in this case and that of the cases cited by Petitioners is too wide, and all too plain for argument.

WHEREFORE, Respondents respectfully submit that the decision of the Court below was correct and should be affirmed.

Respectfully submitted,

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